IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7316 of 1989

with

SPECIAL CIVIL APPLICATION No 4213 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

JAYSUKHLAL N PANDYA

Versus

G S R T C

Appearance:

1. Special Civil Application No. 7316 of 1989

MR JS BRAHMBHATT for Petitioner

MS MAYA DESAI for MR MD PANDYA for Respondent No. 1

2. Special Civil Application No 4213 of 1990

MS MAYA DESAI for MR MD PANDYA for Petitioner

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 12/10/2000

C.A.V. JUDGEMENT

1. Both these petitions are challenging the same award of the Labour Court, Rajkot in Reference (LCR) No.524 of 1985 whereby the petitioner in the first petition is ordered to be re-employed as a fresh appointee on the same post.

2. The learned counsel for the petitioner-workman in the first petition contended that the finding of the departmental inquiry held against the petitioner as well as another employee was incorrect insofar as the other employee was also held to be guilty of misconduct of taking passengers in the bus while none of the delinquents was authorised to do so. It was further submitted that the petitioner as the driver of the bus could not have been held to be responsible for taking passengers when the other employee, i.e. helper, had allowed the passengers who were his relatives.

3. After appreciating the evidence on record, the Labour Court has arrived at the finding of fact to the effect that the petitioner-workman could not have been unaware about the passengers travelling in the bus which was, in fact, sent to the Road Transport Officer for 'passing' and the defence of the petitioner that the lights inside the bus were not on for the petitioner to know about the presence of the passengers was not believed. In such circumstances and also taking into account the past record of the petitioner, the Labour Court exercised its power and discretion under Section 11-A of the Industrial Disputes Act, 1947 and made the impugned award.

4. The learned counsel on either side have failed to make out any ground or reason for interfering either with the finding of fact or the exercise of powers vested in the Labour Court. Under Article 227 of the Constitution, this Court cannot substitute its discretion for the discretion duly exercised by the trial Court. Therefore, these petitions, having no substance, are dismissed. Rule issued in both the petitions is discharged with no order as to costs.

Sd/-

(D.H.Waghela, J.)

KMG Thilake

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